

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of KING Minors.

UNPUBLISHED

March 18, 2014

No. 315762

Wayne Circuit Court

Family Division

LC No. 11-502387-NA

Before: SERVITTO, P.J., and SAWYER and BOONSTRA, JJ.

PER CURIAM.

In this child protective proceeding, respondent, the father of the five minor children, appeals as of right from the circuit court's order terminating his parental rights to his youngest daughter, and the circuit court's separate order terminating his parental rights to his four older daughters. In each order, the court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(b)(i), (g) and (j). We affirm.

I. ADJUDICATION OF DRJK

Respondent first challenges the circuit court's exercise of jurisdiction over his youngest daughter, DRJK. Because the circuit court terminated respondent's parental rights to DRJK at the initial dispositional hearing, his jurisdictional challenge is preserved for appellate review. *In re VanDalen*, 293 Mich App 120, 133 n 2; 809 NW2d 412 (2011).

"To acquire jurisdiction, the factfinder must determine by a preponderance of the evidence that the child comes within the statutory requirements of MCL 712A.2." *In re S R*, 229 Mich App 310, 314; 581 NW2d 291 (1998); see also MCR 3.972(C)(1) (providing that "the standard of proof by a preponderance of evidence appl[ies] at the" adjudication trial). We consider de novo legal issues of statutory interpretation. *Id.* We review for clear error a circuit court's findings of fact underlying its exercise of statutory jurisdiction. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004).

Our Legislature has invested the circuit court with jurisdiction over "proceedings concerning a juvenile under 18 years of age found within the county," MCL 712A.2(b), under the following relevant circumstances:

- (1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary

for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. . . .

* * *

(2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in.

Respondent contends that the circuit court erred in exercising jurisdiction over DRJK on the basis of inappropriate sexual conduct directed at two older half-siblings because the older girls' accounts of the sexual conduct were not credible. At the adjudication trial, DRJK's siblings, then ages 11 and 7, testified to instances of sexual impropriety by respondent at the home they shared with their sisters, mother, and occasionally respondent. The older child testified that respondent followed her into the backyard, told her to look at his "private," removed it from his pants, and told her to touch it. The younger child recounted that respondent had entered her bedroom and placed his hand on her front "private" through her pajamas. Respondent denied ever acting in a sexually inappropriate manner toward the children.

The two sexually abused children further testified that they immediately advised their mother about respondent's actions. Their mother testified that neither child had expressed any allegation of a sexual nature regarding respondent, which the children mentioned to her for the first time at a subsequent, supervised parenting time with the children. But the mother acknowledged that her two daughters' descriptions of respondent's sexual abuse had remained the same each time the children gave the details, including during supervised parenting time, forensic interviews, and at trial. The mother additionally testified that respondent had time alone with the children, that her daughters who testified to the abuse were smart children and "[m]ost of the time" told the truth, that she believed their statements about respondent's sexual abuse, and that she heard that her older daughter had acted out sexually with a neighbor's child. The mother explained that her only hesitation concerning whether the sexual abuse in fact occurred arose from the fact that she had not witnessed respondent's actions herself.

The only adjudication trial evidence tending to rebut the girls' testimony about respondent's actions of sexual abuse consisted of respondent's nonspecific denial. The circuit court implicitly found credible the trial accounts of sexual abuse, an assessment that we will not revisit. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). Giving deference to that credibility determination, the circuit court did not clearly err in finding by a preponderance of the evidence that DRJK came within its jurisdiction pursuant to MCL 712A.2(b).

II. TERMINATION OF RESPONDENT'S PARENTAL RIGHTS

Respondent next asserts that because the circuit court focused on the incredible evidence of sexual abuse as the primary reason for terminating his parental rights, clear and convincing evidence did not support any grounds for termination. Respondent further avers that the court erred in its best interest findings in light of the questionable evidence of sexual abuse and respondent's compliance with his court-ordered treatment obligations.

The petitioner bears the burden of proving a statutory ground for termination by clear and convincing evidence. MCL 712A.19b(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). Once the petitioner has proven a statutory ground for termination by clear and convincing evidence, the circuit court must order termination if “termination of parental rights is in the child’s best interests.” MCL 712A.19b(5). This Court reviews for clear error a circuit court’s decision to terminate parental rights. MCR 3.977(K). The clear error standard controls this Court’s review of “both the court’s decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court’s decision regarding the child’s best interest.” *In re Trejo*, 462 Mich at 356-357. A decision qualifies as clearly erroneous when, “although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.” *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003), reh den 468 Mich 1239 (2003). Clear error signifies a decision that strikes this Court as more than just maybe or probably wrong. *In re Trejo*, 462 Mich at 356.

A. STATUTORY GROUNDS

1. MCL 712A.19b(3)(b)(i)

We conclude that clear and convincing evidence established the propriety of terminating respondent’s parental rights under MCL 712A.19b(3)(b)(i), which authorizes termination when “[t]he child or a sibling of the child has suffered physical injury or sexual abuse,” “[t]he parent’s act caused the physical injury or physical or sexual abuse,” and a reasonable likelihood exists “that the child will suffer from injury or abuse in the foreseeable future if placed in the parent’s home.” Contrary to respondent’s position on appeal, the circuit court did not clearly err in finding clear and convincing evidence that respondent sexually abused two siblings of the children involved in this appeal, given the girls’ descriptions of the details of respondent’s abuse, and the testimony establishing that the girls offered consistent statements concerning the abuse details. Their testimony clearly and convincingly proved that two siblings of the children had endured sexual abuse inflicted by respondent. *In re HRC*, 286 Mich App at 460-461 (explaining that subsection b(i) unambiguously “applies to a child on the basis of the parent’s conduct toward the child’s siblings”). Clear and convincing evidence likewise substantiated a reasonable likelihood of harm to the children, specifically the evidence that respondent inflicted the sexual abuse after he actively participated in services for many months, the testimony of respondent’s caseworker, who at the time of the termination hearing had worked with respondent for a year, that he could not complete a psychological examination due to cognitive deficits, and the caseworker’s belief that respondent’s cognitive impairment prevented him from comprehending and benefitting from the many services in which he had participated.

2. MCL 712A.19b(3)(g)

We also conclude that the circuit court properly found clear and convincing evidence supporting the termination of respondent’s parental rights pursuant to MCL 712A.19b(3)(g), which contemplates the termination of parental rights when “[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.” First, clear and convincing evidence established that respondent

failed to provide the children proper care and custody when he sexually abused their two siblings in the home they shared with respondent's daughters involved in this case. *In re Powers*, 208 Mich App 582, 592-593; 528 NW2d 799 (1995) (recognizing that the respondent's abusive activity toward an elder sibling had relevance "to his ability to provide proper care and custody for [his minor daughter] under subsection (g)"); *In re Hulbert*, 186 Mich App 600, 605; 465 NW2d 36 (1990) (explaining that the statutory ground currently present in subsection (g) "requires 'clear and convincing evidence' of both a failure and an inability to provide proper care and custody"). Second, the record clearly and convincingly proved the unlikelihood that respondent could properly provide for the children within a reasonable time, in light of respondent's infliction of sexual abuse after he had actively participated in services for several months, his caseworker's testimony that respondent could not complete a psychological examination due to cognitive deficits, the caseworker's belief that respondent's cognitive impairment prevented him from comprehending and benefitting from the many services in which he had participated, and the young ages of all of respondent's children and their developmental delays.

3. MCL 712A.19b(3)(j)

Furthermore, the circuit court did not clearly err in invoking as a ground for termination MCL 712A.19b(3)(j), which permits a court to terminate parental rights if clear and convincing evidence establishes that "there is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." The record clearly and convincingly substantiated this ground, specifically the evidence that respondent sexually abused two older siblings in the home they shared with respondent's four oldest children in this case, that respondent inflicted sexual abuse after he actively participated in services, the caseworker's testimony that respondent's cognitive deficits prevented him from completing a psychological examination or benefitting from the many services in which he had participated, and that the children all are young and have developmental delays.

B. BEST INTERESTS

Respondent lastly avers that the circuit court clearly erred in its best interest findings in light of the questionable evidence of sexual abuse and his compliance with the court-ordered treatment obligations. We conclude that the circuit court did not clearly err in finding that termination of respondent's parental rights served the children's best interests. Respondent undisputedly participated in many offered services and loved the children, who also loved him. However, the evidence establishing the statutory grounds for termination, concerning sexual abuse, respondent's inability to benefit from the components of his treatment plan, and the children's youth and special needs, amply support the circuit court's ruling regarding the children's best interests.

Affirmed.

/s/ Deborah A. Servitto
/s/ David H. Sawyer
/s/ Mark T. Boonstra